



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0511; FRL-9986-01-OGC]

### Proposed Consent Decree, Unreasonable Delay Claim Regarding Petition Concerning Treated Seeds and Treated Article Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, Memorandum entitled Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency, notice is hereby given of a proposed consent decree that resolves *Center for Food Safety, et al. v. U.S. Environmental Protection Agency*, a case in the United States District Court for the Northern District of California (3:21-cv-09640-JSC) that alleges EPA unreasonably delayed responding to a petition for rulemaking, submitted to EPA on or around April 26, 2017, relating to the regulatory exemption of pesticide treated seed.

**DATES:** Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0511 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Aranda, Pesticides and Toxic Substances Law Office; telephone (202) 564-3186; email address [aranda.amber@epa.gov](mailto:aranda.amber@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0511) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

### **II. Additional Information about the Proposed Consent Decree**

Prior to this lawsuit being filed, EPA received a petition on or around April 26, 2017, requesting that EPA (1) amend 40 CFR 152.25(a) to exclude seeds for planting coated with systemic pesticides intended to kill pests of the plant, or, (2) in the alternative, publish a formal agency interpretation in the *Federal Register* stating that 40 CFR 152.25(a) does not apply to seeds for planting coated with systemic pesticides intended to kill pests of the plant, and (3) aggressively enforce FIFRA’s numerous pesticide registration and labeling requirements for each separate crop seed product that is coated with a neonicotinoid or other systemic insecticidal chemical (hereinafter, this petition will be referred to as the “2017 Petition” and the three requests enumerated in this paragraph will be referred to as the “2017 Petition Requests”). EPA sought public comment on the 2017 Petition. *See* “Pesticides; Petition Seeking Rulemaking or a

Formal Agency Interpretation for Planted Seeds Treated with Systemic Insecticides; Request for Comment,” 83 FR 66260 (December 26, 2018) (the “Request for Comment”). EPA received approximately 100 substantive comments. Plaintiffs filed a Complaint on December 14, 2021, alleging that EPA’s failure to respond to the petition constitutes an unreasonable delay under Section 706(1) of the Administrative Procedure Act, 5 U.S.C. 706(1).

This proposed consent decree states that no later than September 30, 2022, the appropriate EPA official shall, by letter, either grant, deny, or grant in part and deny in part each of the 2017 Petition Requests. Court approval of this proposed consent decree would resolve all claims in this case except for the claim for the costs of litigation, including reasonable attorneys’ fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the APA or FIFRA. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed consent decree will be affirmed and entered with the Court.

### **III. Additional Information about Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0511 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish

to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Dated: June 30, 2022.

**Randolph L. Hill,**  
*Associate General Counsel.*

